



8615 W. Bryn Mawr Avenue, Chicago, IL
60631-3501
Telephone: (773) 380-9933 Fax: (773) 380-6421
www.CRAworld.com

January 26, 2015

Reference No. 038443-15

Ms. Leslie Patterson
Remedial Project Manager
United States Environmental Protection Agency
Region V
Mail Code SR-6J
Chicago, Illinois
60604

Dear Ms. Patterson:

Re: Ohio Environmental Protection Agency (Ohio EPA) Response - Site History
South Dayton Dump and Landfill Site, Moraine, Ohio (Site History Memo)

This letter provides a summary response to Ohio EPA's September 30, 2014 letter to you regarding Ohio EPA's comments on the August 27, 2014 Site History Memo. A detailed response to the specific comments made by Ohio EPA is provided in Attachment A. The purpose of this letter and the attachment is to respond to Ohio EPA's comments and to correct a number of misstatements in those comments. Conestoga-Rovers & Associates (CRA) has prepared this letter on behalf of the Respondents to the Administrative Settlement Agreement and Order on Consent (ASAOC) for Remedial Investigation/Feasibility Study (RI/FS) of the Site, Docket No. V-W-06-C-852 (Respondents)ⁱ.

The Respondents believe that Ohio EPA's position as stated in its September 30, 2014 letter is built on a number of unsupported statements or assumptions. As discussed below, the facts confirm that the Site did not operate as a municipal or sanitary landfill (or only did so in 1969 after which it was closed in accordance with then-applicable standards); that the materials accepted were primarily unregulated fill material; that the filled areas subject to the solid waste disposal facility licenses were covered and closed in accordance with the requirements of the Site's licenses and then-applicable standards; and that current municipal landfill closure

ⁱ The Respondents include Hobart Corporation (Hobart), Kelsey-Hayes Company (Kelsey-Hayes), and NCR Corporation (NCR). These three Respondents are and have been performing the Work required by the ASAOC under the direction and oversight of the United States Environmental Protection Agency (USEPA).



January 26, 2015

Reference No. 038443-15

- 2 -

requirements are not applicable, relevant, or appropriate for the remediation of this Site. Respondents are confident that the extensive investigation completed under the current ASAO for RI/FS and additional investigation to be completed under the new ASAO for RI/FS will allow for an appropriate evaluation of Site conditions and the selection of protective remedial alternatives.

Ohio EPA's identification of the parcels comprising the disposal area for solid wastes and excluded wastes as it was first licensed in 1969 is based solely on an undated tax map with hand-scrawled notations (see Figure 1), which was found in the Montgomery County Health Department's files and which Ohio EPA attributes to the 1969 solid waste disposal license application. The tax map was neither attached to nor references the 1969 license application (dated December 31, 1968), and Ohio EPA's own correspondence indicates that there is no evidence to connect the tax map with the 1969 license application¹. Further, the undated tax map does not mention or identify areas as being part of a landfill; it merely indicates areas of the former quarry which required fill to bring the ground elevation up to grade.

Ohio EPA's identification of the boundaries of the area included in the 1969 license application, which is based solely on the undated tax map, includes several parcels that cannot be considered part of the licensed solid waste disposal facility:

- Parcels 3275 and 3278 (total of 7.5 acres) were never owned by the owners of the Site (Cyril Grillot and Horace Boesch) and, therefore, could not have been part of the licensed solid waste disposal site.
- Parcels 5172, 5173, 5174, and most, if not all of Parcels 5175 and 5176 (Dryden Road Business Parcels - total of 8.5 acres) were filled prior to the end of 1968 and were, therefore, never part of the solid waste disposal license. At least the eastern half of each of Parcels 5175 and 5176 is shown as filled to grade on the undated tax map. More importantly, the 1968 aerial photograph, conclusively demonstrates that the Dryden Road Business Parcels had been filled in their entirety and were already occupied by active businesses. Further fill placement was not possible.

The only document identified to date which definitively identifies the parcels subject to a solid waste disposal facility license is the November 12, 1970 Solid Waste Disposal Facility Data Sheet, which forms part of the plans for the Site, which were approved by the Ohio Department of Health on January 5, 1971. This document identifies the area subject to the solid waste disposal facility license as being comprised of Parcels 3277, 3059, and 3060 (total of



approximately 25 to 30 acres). These parcels comprise the majority of what is now Parcel 5177 and the southwestern corner of Parcel 5054. The description of the Site as Parcel 5177 and a portion of Parcel 5054 is also consistent with the evidence from the Site investigation, extensive deposition testimony and the aerial photographs.

Ohio EPA asserts that the solid waste disposal facility was never closed because a closure certification was never submitted. Ohio EPA's position is based on the faulty premise that a closure certification was required at this point in time. Ohio EPA is attempting to apply the current sanitary landfill closure requirements to a limited area of the Site where waste disposal occurred under a series of vague licenses and the wastes were primarily exempt materials such as foundry sands, ash from operation of the air curtain destructor (incinerator), and construction and demolition debris. Moreover, closure certification was not required at the time that any regulated operations ceased. Ohio EPA's approach is flawed for two key reasons:

- The Site was never licensed to accept municipal wastes (except perhaps for 1969) as evidenced by the historical licenses and correspondence and the extensive deposition testimony and the Site did not operate as a sanitary landfill.
- The regulations in effect during the Site's period of licensure and cessation of operations did not require the completion of a closure certification but rather, simply required the Site owner to notify the MCHD that the Site was closed and to assure adequate cover material, both of which were completed and are clearly documented in the files and evidenced by RI-FS investigative results.

At the end of 1969, the Site operator submitted notification of closure to the MCHD, which the MCHD acknowledged in writing. This was further confirmed in 1987 when MCHD requested and received a written statement from the Site operator confirming that he was "not operating the South Dayton Landfill at 1975 Dryden Road in Moraine, Ohio as a licensed solid waste disposal facility and thus not accepting solid waste."² Further, the Site is listed as closed in several MCHD and Ohio EPA documents dating back to 1975^{3,4,5}. Despite notice of cessation of operations and subsequent exchanges of correspondence regarding the Site, neither Ohio EPA nor MCHD requested additional closure activities or documentation. This is similar to the multitude of other sites where solid waste was placed within a few mile radius of the Site. No document has been identified or testimony elicited which points to any request by or directive of either the MCHD or Ohio EPA to take any further action to close the Site despite ample documentation of the historical Site use and the owner's position that it was closed.



**CONESTOGA-ROVERS
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January 26, 2015

Reference No. 038443-15

- 4 -

As discussed above and in further detail in Attachment A, the facts confirm the following:

- The Site did not operate as a municipal or sanitary landfill (or only did so in 1969)
- The materials accepted were primarily unregulated fill material
- The limited areas subject to the solid waste disposal facility license were properly closed in accordance with then applicable standards
- Current municipal landfill closure requirements are not applicable, relevant, or appropriate for the remediation of the Site

Further, Ohio EPA's single-minded reliance on an undated, unattributed Site diagram with handwritten notations regarding areas to fill to grade does not provide sufficient or reliable evidence to support a regulatory decision which requires evaluation of remedial alternatives which are contrary to the actual risks presented by Site conditions, inconsistent with regulatory requirements, and a tremendous waste of resources.

The Respondents request that the Site description accurately acknowledge the boundaries of the area subject to any solid waste disposal license as being Parcel 5177 and the southern portion of Parcel 5054 and further that USEPA and Ohio EPA acknowledge that although the relevant area of the Site did accept primarily exempt waste consistent with a series of licenses, the Site did not operate as a sanitary or municipal landfill and, therefore, is not subject to the current municipal sanitary landfill closure requirements of OAC Chapter 3745-27. The relevant areas of the Site were closed consistent with then-applicable standards.



**CONESTOGA-ROVERS
& ASSOCIATES**

January 26, 2015

Reference No. 038443-15

- 5 -

Should you have any questions on the above, please do not hesitate to contact us.

Yours truly,

CONESTOGA-ROVERS & ASSOCIATES

Stephen M. Quigley, P.E.ⁱ

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Encl.

CC: (all by pdf) Madelyn Smith, Ohio EPA
Ken Brown, ITW
Scott Blackhurst, Kelsey Hayes Company
Wendell Barner, Barner Consulting
Steven Lemon, Jones, Lemon & Graham
Wray Blattner, Thompson Hine

Brett Fishwild, CH2M Hill
Bryan Heath, NCR
Ed Gallagher, NCR
Jim Campbell, EMI
Robin Lunn, Neal, Gerber & Eisenberg
Adam Loney, CRA

ⁱ Licensed in Arizona, Delaware, Maryland, and New Hampshire



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& ASSOCIATES**

January 26, 2015

Reference No. 038443-15

- 6 -

Attachment A



**CONESTOGA-ROVERS
& ASSOCIATES**

January 26, 2015

Reference No. 038443-15

- 7 -

Response to Ohio Environmental Protection Agency (Ohio EPA) Comments

The following provides a detailed response to Ohio EPA's September 30, 2014 letter to the United States Environmental Protection Agency (USEPA) regarding the agency's comments on the August 27, 2014 memorandum Site History: South Dayton Dump and Landfill, Moraine, Ohio (Site History Memo). Conestoga-Rovers & Associates (CRA) has prepared these responses on behalf of the Respondents to the Administrative Settlement Agreement and Order on Consent (ASAOC) for Remedial Investigation/Feasibility Study (RI/FS) of the Site, Docket No. V-W-06-C-852 (Respondents)ⁱ in order to respond to Ohio EPA's comments and to correct a number of misstatements in those comments. Relevant excerpts from Ohio EPA's September 30, 2014 letter are provided below in italics followed by CRA's response.

Page 1, Para 2: *Ohio EPA maintains that the South Dayton Dump and Landfill was originally licensed as a solid waste disposal facility in 1969 for the 45-acre property that included parcels 5172, 5173, 5174, 5175, 5176, 5177, 5178, 3275, 3278, 3753, 4423, 4610, (the "Licensed Landfill Parcels").*

Ohio EPA's description of the parcels comprising the solid waste disposal site as it was licensed in 1969 is based on an undated tax map with hand scrawled notations (see Figure 1), which was found in the Montgomery County Health Department's files. The tax map was not attached to the 1969 license application (dated December 31, 1968). It did not reference the application and Ohio EPA's own correspondence indicates that there is no evidence to connect the tax map with the 1969 license application⁶ (see Attachment A.1). Further, the undated tax map does not mention or identify areas as being part of a solid waste disposal facility; it merely indicates areas requiring fill to bring the ground elevation to grade. It does not confirm where and what type of fill was eventually placed.

While Respondents fundamentally disagree with the use of this tax map as a basis for regulation, we point out that Ohio EPA listed several parcels in its letter which are not identified on the tax map as areas to be brought up to grade, including the following: Parcels 3275, 3278 and the majority, if not the entirety of Parcels 5172, 5173, 5174, 5175, and 5176 (total of

ⁱ The Respondents include Hobart Corporation (Hobart), Kelsey-Hayes Company (Kelsey-Hayes), and NCR Corporation (NCR). These three Respondents are and have been performing the Work required by the ASAOC under the direction and oversight of the United States Environmental Protection Agency (USEPA).



January 26, 2015

Reference No. 038443-15

- 8 -

16 acres). Parcels 3275 and 3278 were never owned by the owners of the Site (Cyril Grillot and Horace Boesch) and, therefore, could not have been part of the solid waste disposal facility. As can be seen from the September 1968 aerial photo (see Figure 2), which was taken less than four months prior to the issuance of the first landfill license on January 3, 1969, Parcels 5172, 5173, 5174, 5175, and 5176 are at approximately the same grade as exists today and most of the parcels identified by Ohio EPA as part of a licensed solid waste disposal facility are occupied by buildings and active businesses and, therefore, could not have been the subject of the 1969 license application.

Page 1, Paras 2 and 3: Throughout its history, the site was a co-disposal facility and accepted mixed wastes that included solid wastes, hazardous wastes, and other industrial wastes including fly ash and foundry sand. Though the landfill ceased to accept waste in 1996, South Dayton Dump and Landfill never closed pursuant to the 1976, 1990, 1994, or 2003 rules. Therefore, the Ohio Solid Waste Rules, Ohio Administrative Code (OAC) 3745-27, of 2003 are applicable to the Licensed Landfill Parcels.

The Respondents fundamentally disagree with Ohio EPA's characterization of the types of material placed at the Site and question the use and meaning of the term "co-disposal" which is not defined in Ohio EPA's letter or its regulations. In contrast to other sites in the Dayton area such as the Garland Road and Valleycrest landfills, the Site did not operate as a municipal or sanitary landfill and did not accept truckloads of household or commercial wastes. Only materials that were, at the time, considered inert fill material were used to fill the limited portion of the Site licensed as a solid waste disposal facility. While certain materials were brought to the Site that were classified as solid waste according to the definitions in the 1969 and 1976 Solid Waste Regulations, specifically combustible wastesⁱ; however, this material was required to be burned or recycled according to the solid waste disposal facility licenses. As detailed in the Site History Memo, documents, depositions from individuals associated with the

ⁱ Solid waste is defined in HE 24 as "such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations and slag and other substances which are not harmful or inimical to public health, and includes garbage, combustible and noncombustible material, street dirt, and debris." From 1970 onwards, the materials placed in the landfill included earth or material from construction, demolition operations, slag, and foundry sand and fly ash (the latter two of which were considered not harmful or inimical to public health at the time and were expressly included in the description of permissible cover materials in the license related correspondence. During this time period, the Site did not accept garbage and all combustible materials accepted were incinerated in the licensed ACD. The Site was, therefore, not operating as a sanitary landfill.



January 26, 2015

Reference No. 038443-15

- 9 -

Site, and investigations completed to date the licensed solid waste disposal facility did not accept municipal waste and all combustible wastes were burned.

Page 1, Para 3: *In addition, the 25-acre property that was landfilled before the 1969 license includes parcels 3056, 3057, 3058, 5054, and 5171 (the "Northern Landfill Parcels"). Ohio EPA feels that the 2003 Ohio Solid Waste Rules are relevant and appropriate to the Northern Landfill Parcels that were landfilled before 1969 because: 1) the area was landfilled before licensing was required and therefore couldn't have been the subject of the original license (therefore, the rules are not applicable); and 2) regardless of the timing, the area was landfilled and it is necessary to apply today's closure requirements to adequately protect human health and the environment.*

Respondents intend to proceed with the RI/FS work to develop remediation alternatives based on data and applicable standards. Multimillion dollar decisions regarding remedy selection should not be based on whether Ohio EPA "feels" certain later effective requirements are appropriate. Any risks identified at the Site will be appropriately addressed.

With respect to item 1) in Ohio EPA's statement above, the Respondents concur that the 2003 Ohio Solid Waste Rules are not applicable to parcels filled prior to the 1969 license. Consistent with this analysis, the 2003 Ohio Solid Waste Rules are also not applicable to Parcels 5172, 5173, 5174, and the majority, if not all, of Parcels 5175, and 5176 for the reasons detailed above. Parcels 3056, 3057, and 3058 were never owned by Cyril Grillot and Horace Boesch (the owners of the Site) and any filling that occurred on Parcels 3056, 3057 and all but the southeastern most portion of Parcel 3058 occurred prior to the existence of the "South Dayton Dump and Landfill", which began operation in approximately 1945. Therefore, Parcels 3056, 3057 and 3058 should not be included in the definition of the Site.

With respect to item 2) in Ohio EPA's statement above, the conclusion that because the area was filled it is necessary to apply today's sanitary landfill closure requirements is overreaching and inconsistent with Ohio EPA's treatment of similar sites within Ohio, including former dump sites in the area immediately surrounding the Site. Figure 3 shows the known historic dump sites in the immediate vicinity of the Site, many of which accepted waste material similar to those found on the Northern Landfill Parcels and many of which were never formally closed or which were closed with covers that do not meet the requirements for a sanitary landfill in OAC 3745-27. Ohio EPA has not consistently required these sites to meet the closure requirements for sanitary landfills in the 2003 Ohio Solid Waste Rules. Careful and complete analysis of the potential human health and environmental hazards identified by Ohio EPA will be included in the Operable Unit One (OU1) RI/FS Report and associated technical memoranda. It is



January 26, 2015

Reference No. 038443-15

- 10 -

unnecessary and counterproductive to disregard this process and the substantial work proposed by Respondents.

Page 2, Paragraph 1: *There appear to be three parcels owned by the Miami Conservancy District (3274, 3275, and 3278) that were never part of the original landfill license, yet there is currently waste present on portions of these three parcels. In instances where waste extends beyond the license footprint as to encroach on neighboring properties, Ohio EPA's position is that the waste be brought back on site for closure, or the final cap must extend to cover the entirety of the waste.*

The Respondents concur with Ohio EPA's statement that Parcels 3274, 3275, and 3278 were never part of the solid waste disposal facility licenses. The Respondents do note, however, that in paragraph 2 on page 1 and bullet 1 on page 2, Ohio EPA states that Parcels 3275 and 3278 were part of the licensed area, which is incorrect.

The statement that waste present on Parcels 3274, 3275, and 3278 should "be brought back on site for closure" implies that the material originated on Site. Small quantities of waste material appear to have been illegally dumped on Parcels 3274 and 3275; however, this illegal dumping was not in any way associated with Site activities. Fill material may have been disposed on Parcel 3278 during operation of the licensed facility and the Respondents concur that any such wastes should be addressed as part of the remedial action for the Site. Additional investigation of Parcels 3274 and 3275 will be undertaken during the OU1 RI to determine whether wastes and hazardous substances associated with Site activities have come to be present on these two parcels. Actual site data should drive remedial decisions. While Respondents do not believe the "tax map" offers relevant information, we note that these parcels are not included on the "tax map" as areas to be brought to grade.

Page 2, Bullet 1.: *How Ohio EPA determines whether Ohio Solid Waste Rules are applicable to landfills under CERCLA*

1. *Was the landfill (i.e., the Licensed Landfill Parcels) licensed?- Yes, in 1969 the South Dayton Dump and Landfill was licensed for the 45-acre property that included parcels 5172, 5173, 5174, 5175, 5176, 5177, 5178, 3275, 3278, 3753, 4423, 4610, (the "Licensed Landfill Parcels").*



January 26, 2015

Reference No. 038443-15

- 11 -

The Site was licensed as a solid waste disposal facility accepting specified and limited types of waste and not as a sanitary landfill. While a number of the licenses and inspection reports note that a landfill was operated at the Site, the MCHD was careful to repeatedly note while the Site was operating that the Site was an industrial landfill and was not licensed to accept solid wastes for landfilling. Even the 1969 solid waste disposal license that Ohio EPA refers to as proof that the Site was a sanitary landfill indicates that the Site was accepting solid fill⁷. It is clear from the historical records that the MCHD did not consider the Site to be a sanitary landfill. Therefore, the closure rules for sanitary landfills were and are not applicable to the Site.

As noted above, Ohio EPA's description of the parcels allegedly operated as a landfill licensed in 1969 is based solely on the undated "tax map" (see Figure 1), which Ohio EPA has separately concluded has no definitive connection to the 1969 license application⁸. Further, Ohio EPA has listed several parcels which are not included within the area to be brought to grade identified on the undated tax map, including the following: Parcels 3275 and 3278, and at least the eastern halves of Parcels 5172, 5173, 5174, 5175, and 5176. As can be seen from the September 1968 aerial photo, which was taken less than four months prior to the issuance of the first solid waste disposal license on January 3, 1969, Parcels 5172, 5173, 5174, 5175, and 5176 are at approximately the same grade as exists today and most of the parcels in question are occupied by buildings and active businesses. Finally, Ohio EPA's assertion that Parcels 3274, 3275, and 3278 were part of the licensed area is contradicted by Ohio EPA's statement in paragraph 2 on page 2 that these three parcels were never part of the licensed solid waste disposal facility.

The only document identified to date which definitively identifies the parcels occupied by the licensed solid waste disposal facility is the November 12, 1970 Solid Waste Disposal Facility Fact Sheet⁹, which forms part of the plans for the Site, which were approved by the Ohio Department of Health on January 5, 1971¹⁰. This document identifies the licensed solid waste disposal area as being comprised of Parcels 3277, 3059, and 3060. A November 12, 1970 letter from the City of Moraine to the MCHD also refers to only Parcels 3277, 3059, and 3060 as being zoned M-2 Industrial and, these parcels are listed as the permitted area¹¹. These parcels comprise what is now Parcel 5177 and the southwestern corner of Parcel 5054 (total of approximately 25 to 30 acres). The description of the Site as Parcel 5177 and a portion of Parcel 5054 is consistent with the evidence from the depositions and the aerial photographs.



January 26, 2015

Reference No. 038443-15

- 12 -

Page 3, Bullet 2.: *Was waste accepted?- Yes, the Licensed Landfill Parcels accepted waste material.*

The mere acceptance of "waste material" does not render a site a sanitary landfill. A sanitary landfill is defined in HE-24 and the 1976 Ohio Solid Waste Rules as "a method of disposing of solid wastesⁱ on land without creating nuisances or hazards to public health by utilizing principles of engineering to confine the solid wastes to the smallest practical area, to reduce the solid wastes to the smallest practical volume and to cover such wastes." The key term in the definition of a sanitary landfill is "solid waste", which specifically excludes the types of waste material which were authorized to be used as fill material at the Site, namely earth or material from construction, demolition operations, slag, and foundry sand and fly ash (the latter two of which were considered not harmful or inimical to public health at the time and were expressly included in the description of permissible cover materials in the license related correspondence). During this time period, the Site did not accept garbage and combustible materials accepted were incinerated in the licensed air curtain destructor (ACD). Based on the historical licenses and correspondence, the operators were not permitted to landfill solid wastes at the Site. The Site was, therefore, not operating as a sanitary landfill.

Page 3, Bullet 3.: *What type of waste was accepted? - These parcels were operated as a co-disposal landfill. Waste material accepted at the Licensed Landfill Parcels included but is not limited to municipal waste, drummed industrial waste, bulk industrial waste, foundry sand, fly ash, and demolition debris. However, even if the site had only accepted "exempt" material, the Ohio Solid Waste Rules would apply to any foreign material placed within the licensed area.*

As noted above, the Respondents fundamentally disagree with Ohio EPA's characterization of the types of material placed at the Site and its use of the term "co-disposal". See the response to Ohio EPA comments on **Page 1, Paras 2 and 3**, above

ⁱ Solid waste is defined in HE 24 as "such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations and slag and other substances which are not harmful or inimical to public health, and includes garbage, combustible and noncombustible material, street dirt, and debris." From 1970 onwards, the materials placed in the landfill included earth or material from construction, demolition operations, slag, and foundry sand and fly ash (the latter two of which were considered not harmful or inimical to public health at the time and were expressly included in the description of permissible cover materials in the license related correspondence). During this time period, the Site did not accept garbage and all combustible materials accepted were incinerated in the licensed ACD. The Site was, therefore, not operating as a sanitary landfill.



January 26, 2015

Reference No. 038443-15

- 13 -

As stated in CRA's August 29, 2014 memo, there is no evidence that municipal solid waste was disposed of in the licensed solid waste disposal facility. Ohio EPA has not provided any new evidence to justify this assertion. There is also no evidence that drummed industrial waste was placed within the licensed solid waste disposal facility. The only uncrushed, non-empty drums identified to date were the six drums removed from Parcel 5054, which, based on the historical evidence, were placed there by Ottosen Solvents decades after this parcel was filled. The intact, full drums identified to date were not associated with the filling activities but were rather a later instance of illegal waste disposal by parties unconnected with either the licensed fill activity or the Respondents.

The Ohio solid waste rules for sanitary landfills would only apply if the Site had been operated as a sanitary landfill, which based on the descriptions of materials accepted in the various licenses and correspondence regarding permitted materials, it was not. Further, the 2003 Ohio Solid Waste rules would only apply if the Site had operated as a sanitary landfill and had not been closed in accordance with the rules in effect when an area ceased accepting fill material. The licenses and inspection reports for the Site at the relevant time periods required that two feet of inert material be placed over any wastes. Inspection records indicate that, while placement of cover was occasionally not completed as expeditiously as required, appropriate cover was achieved and remains. The investigations completed to date corroborate that this as 2 feet or more of inert material is present overlying the fill material throughout the historically licensed and unlicensed areas of the Site.

Page 3, Bullet 4.: What timeframe was waste accepted? -According to the CRA Memorandum, the Licensed Landfill Parcels accepted waste from as early as 1969 until 1996.

The assertion that the Site accepted waste from 1969 until 1996 is incorrect. The Site accepted fill from as early as 1945 through 1996. The Site was licensed to accept specified waste materials in 1969; however, the nature of the operation is described as "solid fill" and the Site was licensed to accept only commercial and industrial waste. There is no indication that the Site was a sanitary landfill as defined in HE-24 or OAC 3745-27ⁱ. Further, the operator, Alcine

ⁱ Sanitary landfill is defined in HE 24 as "a method of disposing of solid wastes on land without creating nuisances or hazards to public health by utilizing principles of engineering to confine the solid wastes to the smallest practical area, to reduce the solid wastes to the smallest practical volume and to cover such wastes." The definition of solid wastes specifically excludes "earth or material from construction, mining, or demolition operations and slag and other substances which are not harmful or inimical to public health",



January 26, 2015

Reference No. 038443-15

- 14 -

Grillot, informed the MCHD that he would no longer operate a solid waste disposal site and that as of January 1, 1970 he would "only accept dirt, concrete, fly ash, brick, incinerator [sic] ash or other unorganic [sic] material which the Board of Health will approve." The MCHD acknowledged the letter and stated that the "request to waive the requirement for engineering plans for a solid waste disposal site is granted since you do not intend to operate a solid waste disposal site after December 31, 1969." This notification met the closure requirements in effect at the timeⁱ and, therefore, the licensed area of the Site as it existed in 1969, whether or not it was a sanitary landfill, was closed to the satisfaction of the MCHD, the agency responsible for overseeing licensed solid waste disposal facilities. This means that even if the undated tax map did form part of the 1969 license application (there is no evidence that this is the case and Ohio EPA has separately concluded that no connection can be made between the two documents), the area of the Site to which it applied was closed at the end of 1969 and, therefore, the undated tax map ceases to have any relevance to the licensed solid waste disposal facility post 1969. From 1970 through 1986 the Site operated under various licenses which provided for the acceptance of appropriate fill material but prohibited the Site from accepting solid waste for landfilling. Therefore, apart from a possible 1-year period where the Site may have been licensed as a sanitary landfill in 1969 and subsequently closed, the Site did not accept solid waste for landfilling according to the definitions in place during the period of operation. As discussed previously, the 1970 solid waste disposal facility license specifically limits the licensed area to present day Parcel 5177 and the southwestern portion of Parcel 5054.

which are the materials that the Site was licensed to accept based on historical documents, depositions, and investigations completed to date.

ⁱ HE 24 did not contain any closure requirements but did require that "cover material of earth or other material acceptable to the health commissioner be applied at the end of each day's operation or more frequently when necessary unless otherwise approved by the director, and at a compacted depth so as to prevent insect and rodent attraction, breeding, and emergence; blowing litter; release of offensive odors; fire hazards; unsightly appearance and which will permit minimal percolation of surface water. The completed sanitary landfill shall be graded to serve its intended purpose and completed in accordance with the approved plans and specifications. HE 24 did not include any formal closure reporting or certification requirements.



January 26, 2015

Reference No. 038443-15

- 15 -

Page 3, Bullet 5.: *Did the Licensed Landfill Parcels go through closure? - No, the Licensed Landfill Parcels never closed pursuant to the 1976, 1990, 1994, or 2003 rules and is therefore, subject to the current Ohio Solid Waste Rules.*

As noted above, at the end of 1969, the Site operator submitted notification of closure to the MCHD, which was acknowledged by MCHD. In 1987, MCHD requested a written statement from the Site operator confirming that he was "not operating the South Dayton Landfill at 1975 Dryden Road in Moraine, Ohio as a licensed solid waste disposal facility and thus not accepting solid waste."¹² The Site owner provided written confirmation stating that "I have not received 'SOLID FILL' for about (10) TEN YEARS and do not need 'SOLID WASTE' Permit." Further, the Site is listed as closed in several MCHD and Ohio EPA documents^{13,14,15}. No document has been identified or testimony elicited which points to any request by or directive of either the MCHD or Ohio EPA to take any further action to close the previously licensed portion of the Site despite ample documentation of the historical Site use and correspondence with the Site owners.

Page 3, Bullet II.: *Why Ohio EPA considers Ohio Solid Waste Rules to be relevant and appropriate to specific areas of the landfill:*

Proceeding on the appropriate assumption that the Solid Waste Rules are not applicable, a thorough discussion of the relevance and appropriateness of the Ohio Solid Waste Rules to the Northern Parcels (i.e., Parcels 5054, 5171, 5172, and portions of Parcels 3056, 3057, and 3058) is most appropriately left until completion of the RI. However, in the interim, the Respondents offer the following observations with respect to Ohio EPA's statements with respect to the relevance and appropriateness of the Ohio Solid Waste Rules.

Page 3, Bullet II.1.: *Was the landfill (i.e., the Northern Landfill Parcels) licensed?- No, there are portions of South Dayton Dump and Landfill that were landfilled prior to relevant regulations. These parcels include 3056, 3057, 3058, 5054, and 5171.*

Ohio EPA states that the parcels in question were landfilled; however, the available information indicates that areas in the northeastern part of the Site were filled with inert fill material while unregulated burning dumps were operated in the northwestern portions of the Site. Neither of these activities would be classified as the operation of a regulated waste disposal facility or landfill. Further, the Respondents note that Parcels 5172, 5173, 5174, and the majority, if not



January 26, 2015

Reference No. 038443-15

- 16 -

all, of Parcels 5175, and 5176 were brought to grade and in use well prior to the effective date of relevant closure regulations.

Page 3, Bullet II.2.: Was waste accepted? -Yes, the Northern Landfill Parcels accepted waste material.

Ohio EPA's use of the term waste is overly broad and ignores the history of filling activities at the Site. Materials disposed on the Northern Parcels prior to the end of 1968 did not meet the definition of solid waste in HE-24. Rather, the materials were "earth or material from construction, mining, or demolition operations and slag and other substances which are not harmful or inimical to public health", according to the standards of the day, and were therefore specifically excluded from the definition of solid waste. Any materials that would now be defined as municipal solid waste but were then defined as garbage and combustible materials were burnt and the ashes therefrom placed in the dump. Therefore, while garbage and combustible materials would fall within the definition of solid waste in HE-24, the ashes from their combustion would not, and it is this material that was actually used as fill.

Page 3, Bullet II.3.: What type of waste was accepted? - These parcels were operated as a co-disposal landfill. Waste disposed of included but was not limited to municipal waste, drummed industrial waste, bulk industrial waste, foundry sand, fly ash, and demolition debris.

Any municipal solid waste (i.e., garbage) that was accepted was reportedly burned prior to disposal in the dump.^{16,17,18} According to historical documents and depositions, the Site did not accept municipal waste after 1955. Municipal waste accepted prior to 1955 was reportedly burnt. The considerable subsurface investigations completed at the Site to date have not identified municipal waste despite sampling at numerous locations and depths. Ohio EPA has not provided any evidence that would suggest municipal waste was placed on the Northern Parcels.

Page 3, Bullet II.4.: What timeframe was waste accepted? - According to the CRA Memorandum, these parcels accepted waste from the turn of the century to roughly 1972.

The Respondents note that based on the available evidence, including the 1968 aerial photograph (see Figure 2), all filling had ceased on the Northern Parcels by 1968, prior to any



**CONESTOGA-ROVERS
& ASSOCIATES**

January 26, 2015

Reference No. 038443-15

- 17 -

licensing requirements. Ohio EPA's statement that "these parcels accepted waste from the turn of the century to roughly 1972" is incorrect.

Page 3, Bullet II.5.: Did the Northern Landfill Parcels go through closure? - No, these parcels were never closed pursuant to the 1976, 1990, 1994, or 2003 rules.

The placement of fill material/waste on the Northern Parcels ceased well before closure requirements existed as part of any solid waste disposal regulations, i.e., prior to 1969. No closure requirement applied then or now. In fact, many of these parcels were developed and in use before 1969. The extensive data obtained through the Site investigations completed to date indicate that a minimum of two feet of inert cover material is present throughout most, if not all, of the Northern Parcels. This cover material would meet the closure requirements of HE-24 and the 1976 rules.

Page 5, Bullet III.: How Ohio EPA defines "closure" under Ohio Solid Waste Rules, historically and currently

The application of Ohio Solid Waste Rules as Applicable or Relevant and Appropriate Requirements (ARARs) under CERCLA was previously described in detail by Ohio EPA at the Garland Road Landfill site¹. This correspondence was provided to you and your assistant Regional Counsel on May 30, 2014. As discussed in attachment 1, if there is no documentation demonstrating closure of the landfill, i.e., "written certification" of closure, per OAC 3745-27-11, then the landfill is not considered closed and remains subject to the Ohio Solid Waste Rules.

The CRA Memorandum cites evidence of what could be considered cover material under previous versions of the Ohio Solid Waste Rules and claims that such material is proof of closure. However, closure under the 1976, 1990, 1994, and 2003 Ohio Solid Waste Rules requires a closure certification to be filed with the county and the Ohio EPA. Attachment 2 is an example of closure notification under the 1976 rules for the New Carlisle landfill in Clark County. Unless a closure certification for the 45-acre licensed area of the South Dayton Dump and Landfill has been submitted to and approved by the county and Ohio EPA, the area remains subject to closure pursuant to OAC 3745-27-11.

Ohio EPA's statement that "written certification" of closure is required to demonstrate closure of a landfill is an attempt to apply the current closure requirements to a solid waste disposal facility that ceased accepting waste and was appropriately "closed" or covered prior to the



effective date of the current requirements. The agency's position would require facility operators to anticipate closure requirements which did not exist at the cessation of operations.

HE-24 did not contain any closure certification requirements but did require that

"...cover material of earth or other material acceptable to the health commissioner be applied at the end of each day's operation or more frequently when necessary unless otherwise approved by the director, and at a compacted depth so as to prevent insect and rodent attraction, breeding, and emergence; blowing litter; release of offensive odors; fire hazards; unsightly appearance and which will permit minimal percolation of surface water. The completed sanitary landfill shall be graded to serve its intended purpose and completed in accordance with the approved plans and specifications."

HE 24 did not include any formal closure reporting or certification requirements. The MCHD required the placement of 2 feet of inert material. The Site owners complied with this request as evidenced by subsequent MCHD inspections and correspondence and the investigations completed at the Site. There were no requirements for the preparation of a "closure certification" in HE-24. Therefore, the portions of the Site where filling was completed prior to the end of 1975 met the closure requirements of the day. A 1975 survey of Montgomery County Landfills identifies the "Grillot Disposal Site" as closed, which demonstrates that the relevant agency (i.e., MCHD) regarded the previously licensed areas of the Site as closed in accordance with the regulations of the period¹⁹.

The Respondents note that apart from possibly the year 1969, the Site never operated as a sanitary landfill and the portion of the Site where waste disposal occurred in 1969 met the closure requirements of the day, including notification to the MCHD that the Site would no longer be operating as a landfill²⁰. The 1976, 1990, 1994, and 2003 closure requirements applicable to sanitary landfills do not apply to the Site. Further, the Solid Waste Disposal Facility licenses from 1976 onwards explicitly forbid the Site from accepting "any garbage or solid wastes". Therefore, the Site was not a sanitary landfill subject to the closure requirements of the 1976 version of OAC 3745-27-11. Notwithstanding the forgoing, the 1976 version of OAC 3745-27-11 stated that closure of a sanitary landfill shall be deemed to have occurred if, *inter alia*, "the operator declares the facility closed." There was no requirement for submission of a "closure certification" contrary to the statements of Ohio EPA above.



Page 5, Bullet IV.: The applicable state ARARs' effects on future decisions and work at the landfill

The fact that South Dayton Dump and Landfill was licensed affects the way USEPA will define the solid waste management area in the new administrative order on consent (AOC) and statement of work (SOW) for OU1. In addition, in the event that a new AOC cannot be negotiated, applicable state ARARs affect the type of investigation and range of alternatives evaluated for parcels 5178, 3753, 4423, 4610, and 3275 of OU2 (the "Licensed Landfill Parcels of OU2").

A discussion of the original landfill license is provided in Attachment 3 (4/7/14 M. Smith to L. Patterson RE: SDDL license). Under a new AOC, Ohio EPA believes the entirety of the waste management area should be addressed as a single operable unit. The December 2010 dispute resolution arbitrarily split the Licensed Landfill Parcels into two operable units (OU1 and OU2) with independent and conflicting RI/FS processes. The RI/FS process for OU2 has thus far not recognized the applicability of Ohio's 2003 Solid Waste Rules, specifically closure requirements under OAC chapter 3745-27-11, to the Licensed Landfill Parcels in OU2.

As discussed above and in the Site History Memo, only Parcel 5177 and a portion of Parcel 5054 were ever licensed in a manner to authorize the acceptance of solid waste (and this portion never accepted municipal waste) and the licensed portion of the Site was closed in accordance with the regulations of the day. OU2, as referred to by Ohio EPA in its comments, refers to the Southern Parcels (i.e. Parcels 3252, 3274, 3275, 3753, 4423, 4610, and 5178). As noted above, Ohio EPA again relies entirely on the undated tax map designating areas to be filled for its assertion that the Southern Parcels were part of the licensed portion of the Site. The statement in the April 7, 2014 email from Ohio EPA to EPA that "[p]art of the [1969 Landfill License] application (as outlined in the Dec. 18, 1968 letter) was the property map, which specifies the bounds of the licensed portion of the Site, as well as describes the type of wastes and landfill operations" is contradicted by Ohio EPA's own statements that the "no documentation exists concerning the origin of the map"¹. As detailed in the Site History Memo, filling on the Southern Parcels did not occur until after the closure of the portion of the Site licensed in 1969 in accordance with the applicable regulations (i.e., HE-24) and, therefore, the Southern Parcels do not constitute part of a licensed portion of the Site and none of the 1976, 1990, 1994, or 2000 closure requirements are applicable.

Page 6, Paragraph 2: In the event that a new AOC cannot be negotiated, the applicable Ohio Solid Waste Rules affect the work proposed under the current draft of the OU2 work plan for



investigating waste on the Licensed Landfill Parcels in OU2. In the current draft of the OU2 work plan, the PRPs have proposed to sample waste for risk characterization. The assumption under the OU2 work plan is that unless the proposed investigation and subsequent risk assessment identify unacceptable risk, no action on the Licensed Landfill Parcels in OU2 is required. In addition to short comings of the draft OU2 work plan with respect to generating the data needed to support a baseline human health and ecological risk assessment, the current investigative approach fails to recognize the obligation to comply with applicable Ohio Solid Waste Rules, specifically closure requirements under OAC chapter 3745-27-11. Instead, the investigative approach appears to be designed to raise risk-based arguments for not complying with these requirements. The proposed investigative approach is also inconsistent with USEPA Conducting Remedial Investigations/Feasibility Studies for CERCLA Municipal Landfill Sites guidance (February 1991), which limits the sampling of waste at municipal co-disposal landfills to determining the lateral and vertical extent of waste placement, the gross quantity of waste, the physical environment within which the waste exists, characterizing potential "hot spots", and to assist in identification of PRPs.

The approach to investigating waste on the Licensed Landfill Parcels of OU2 should focus on whether or not disposal occurred and the extent of the disposal as opposed to investigating waste for risk. Disposal undeniably occurred on the Licensed Landfill Parcels of OU2; however, a variance to the applicable closure requirements under the Ohio Solid Waste Rules can be justified per OAC 3745-27-03 (C). For example, with regard to capping requirements, such a variance could be evaluated for any part of the licensed area where it can be demonstrated that disposal did not occur or where, if waste is present, the clean-up plan calls for the waste to be removed. This was communicated to USEPA initially in an email correspondence on December 17, 2013 and to the PRPs by Ohio EPA via a conference call on March 13, 2014, and via email on March 24, 2014. The Licensed Landfill Parcels of OU2 have a 15-acre Quarry Pond as a result of the gravel pit that was never fully filled in; it has been suggested that a remedy for the site could include removing any waste from the Quarry Pond and using the pond as the storm water retention pond for the rest of the capped landfill.

The Respondents are confident that the work required under the revised ASOC is appropriate. Ohio EPA's demand is based on the supposition that the Southern Parcels were part of the licensed portion of the Site and that waste is present throughout the Southern Parcels. There is no evidence to support this position and the RI will confirm the conditions on the Southern Parcels and evaluate potential risks, if applicable.

As discussed above, the OAC 3745-27-11 closure requirements are not applicable to the Southern Parcels. Therefore, for the purposes of determining whether the OAC 3745-27-11



**CONESTOGA-ROVERS
& ASSOCIATES**

January 26, 2015

Reference No. 038443-15

- 21 -

closure requirements are relevant and appropriate, an investigation focused on determining whether unacceptable risks are present on the Southern Parcels is appropriate.

Page 7, Paragraph 1: *Ohio EPA is open to discussions as to how or where variances consistent with OAC 3745-27-03 (C) might be applied. Ultimately, Ohio EPA is not interested in blindly applying Solid Waste Rules wherever possible. Rather, Ohio EPA is interested in achieving a reasonable, protective remedy for the entire site, and believes careful evaluation of the applicable and relevant and appropriate Solid Waste Rules, with due consideration of OAC 3745-27-03, can help guide us to that end.*

The Respondents appreciate Ohio EPA's openness to further discussion and willingness to entertain variances where appropriate. The Respondents will continue to work with USEPA and Ohio EPA to identify the ARARs that are apposite to the Site and to identify remedies that satisfy the ARARs and address any risks identified during the RI/FS process.



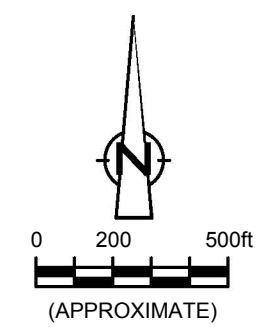
January 26, 2015

Reference No. 038443-15

- 22 -

References

- ¹ Justice, Matt, Ohio EPA Southwest District Office, 2002. Letter to Karen Cibulskis, USEPA, re: "South Dayton Dump and Landfill, REQUEST FOR INFORMATION", November 12, 2002, 1p.
- ² Hut, Thomas A., MCHD – Bureau of General Services, 1987. Letter to Alcine Grillot re: "Request for written statement that the landfill is no longer operating as a licensed solid waste disposal facility", April 14, 1987, 1p.
- ³ Boyd, Roger, Ohio EPA, 1992. Memorandum to Laura Fay, Ohio EPA, "Inter-Office Communication Re: Old Solid Waste Landfills (OLDSWLF)", July 28, 1992.
- ⁴ 1975. List of Montgomery County Landfills/Closed and Active, January 9, 1975, 4p.
- ⁵ 1992. DERR Database – Old Solid Waste Landfills
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- ⁷ Montgomery County District Board of Health. January 3, 1969. Application for License to Operate Solid Waste Disposal Site.
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- ¹⁰ Arnold, E. W., Ohio Department of Health, 1971. Letter to Alcine Grillot re: "Approval of Project Plans", January 5, 1971, 1p.
- ¹¹ Bush, J.F., City of Moraine. Letter to John Bindeman, MCHD re: Refuse Disposal Permit for April 1, 1970 through April 1, 1971, November 12, 1970.
- ¹² Hut, Thomas A., MCHD – Bureau of General Services, 1987. Letter to Alcine Grillot re: "Request for written statement that the landfill is no longer operating as a licensed solid waste disposal facility", April 14, 1987, 1p.
- ¹³ Boyd, Roger, Ohio EPA, 1992. Memorandum to Laura Fay, Ohio EPA, "Inter-Office Communication Re: Old Solid Waste Landfills (OLDSWLF)", July 28, 1992.
- ¹⁴ 1975. List of Montgomery County Landfills/Closed and Active, January 9, 1975, 4p.
- ¹⁵ 1992. DERR Database – Old Solid Waste Landfills
- ¹⁶ February 28, 2006 Deposition of Jack Boesch.
- ¹⁷ Grillot, Alcine, 1969. Letter to Robert A. Vogel, MCHD, re: "Alcine Grillot stating he does not operate a landfill and has not since about 1955", September 2, 1969, 1p.
- ¹⁸ 1989 letter from Alcine Grillot to MCHD.
- ¹⁹ 1975. List of Montgomery County Landfills/Closed and Active, January 9, 1975, 4p.
- ²⁰ Grillot, Alcine, 1969, *ibid*.



South Dayton Dump & Land Fill
 1975 Spring low R.R. Moraine 45439 Ohio
 Property owned by Cyril J. Shiller & Horace Boeck
 operated by Albert Shiller & Kenneth Shiller

Finish Grade

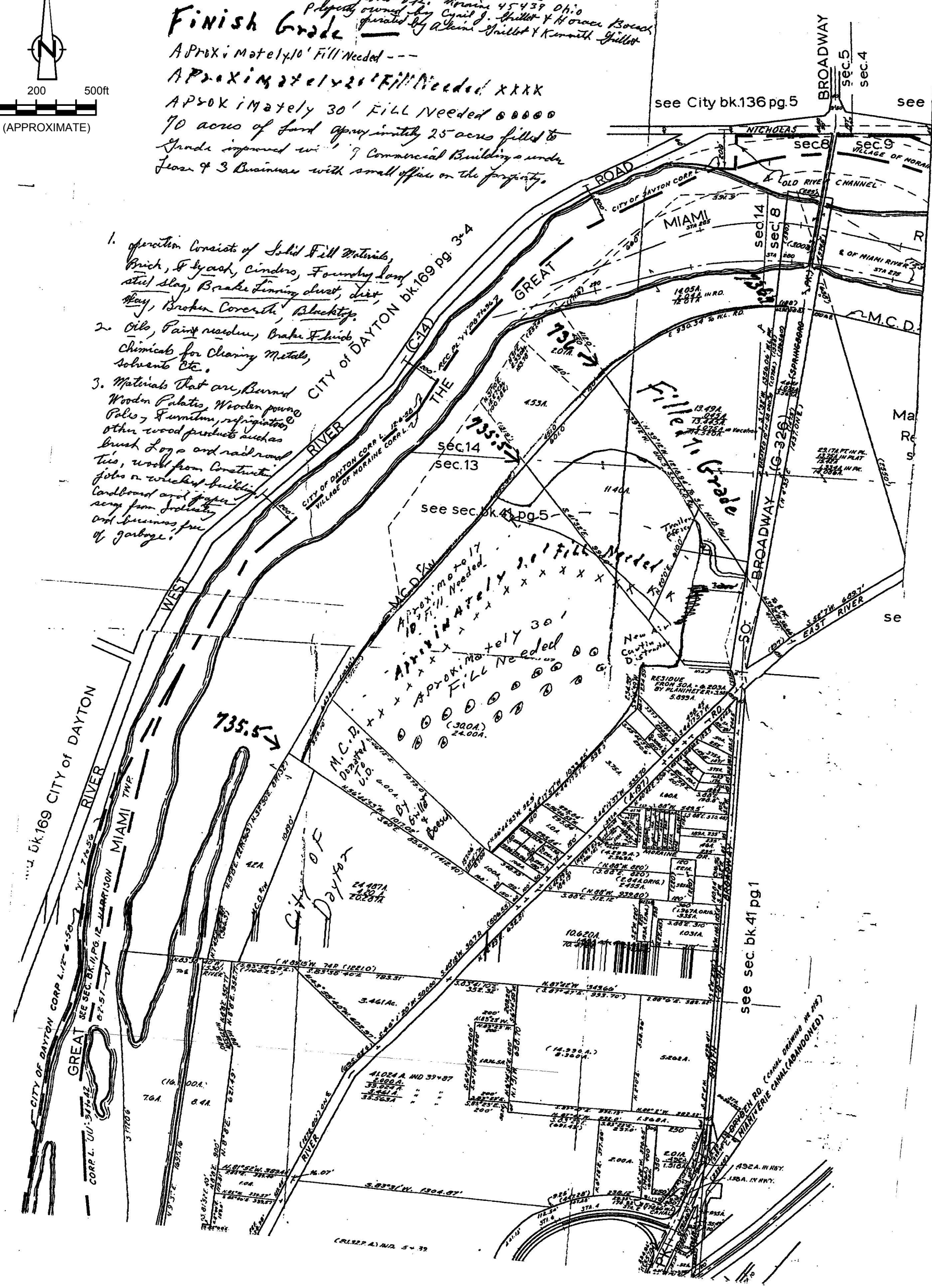
Approximately 10' Fill Needed ---

Approximately 20' Fill Needed XXXX

Approximately 30' Fill Needed OOOOO

70 acres of land approximately 25 acres filled to
 Grade improved with 9 Commercial Buildings under
 Lease & 3 Business with small office on the property.

1. operation consists of Solid Fill Materials,
 Brick, & Lysack, Cinders, Foundry slag,
 steel slag, Brake Lining dust, dirt,
 Hay, Broken Concrete, Blacktop.
2. Oil, Paint residue, Brake Fluid,
 Chemicals for cleaning Metals,
 solvents Etc.
3. Materials that are, Burned
 Wooden Palates, Wooden piling,
 Poles, Furniture, refrigerators,
 other wood products such as
 brush Logs and railroad
 ties, wood from construction
 jobs or wrecked building
 cardboard and paper
 scrap from industry
 and business, free
 of garbage.




SOURCES:
 HISTORIC TAX MAP, UNDATED.

figure 1
 TAX MAP AND NOTES
 SOUTH DAYTON DUMP AND LANDFILL SITE
 Moraine, Ohio



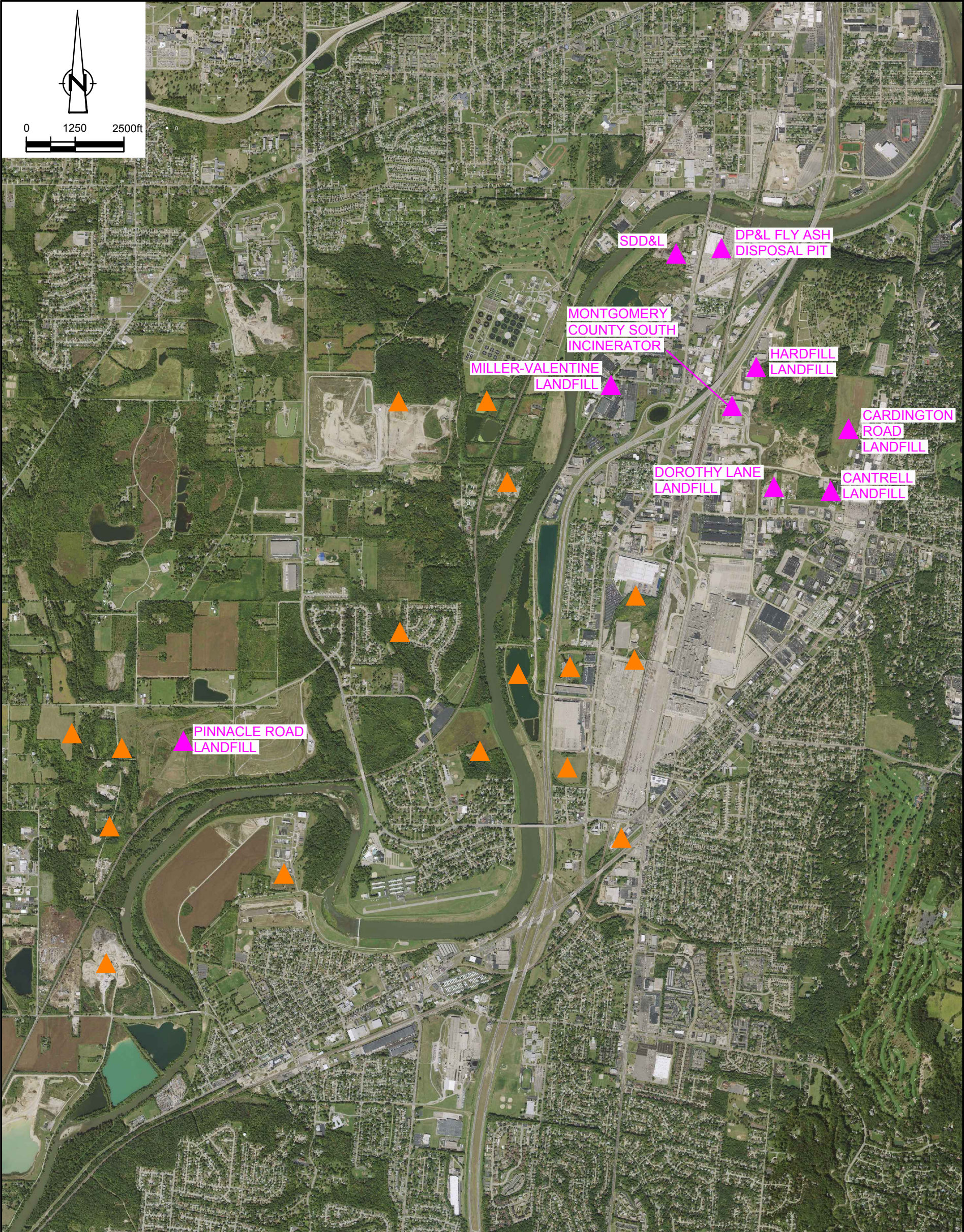


LEGEND

 APPROXIMATE SITE BOUNDARY
 PARCEL BOUNDARY



SOURCE:
MONTGOMERY COUNTY



SOURCE: ESRI BASEMAP IMAGERY, ACQUISITION DATE UNKNOWN, ACCESSED 2014;
COORDINATE SYSTEM: NAD 1983 CORS96 STATEPLAN OHIO SOUTH FIPS 3402 FT US

LEGEND



-  HISTORIC DUMP SITES
-  SOLID WASTE DISPOSAL SITES
(AFTER PLUMMER, 1973; MVRPC, 1981)



figure 3
HISTORIC DUMP SITES
SOUTH DAYTON DUMP AND LANDFILL SITE
Moraine, Ohio